

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A)
SHORELINE SUBSTANTIAL DEVELOPMENT)
PERMIT ISSUED BY KING COUNTY)
TO H. M. JOHNSON,)
MONSANTO COMPANY,)
Appellant,)
v.)
KING COUNTY, H. M. JOHNSON,)
and TERMINAL 128 CORPORATION,)
Respondents.)

SHB No. 80-48

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, a request for review of a substantial development permit issued by King County to H. M. Johnson as agent for Terminal 128 Corporation, came on for hearing before the Shorelines Hearings Board, David Akana, Rodney Kerslake, Steve Tilley, Richard A. O'Neal, and Gayle Rothrock, Members, convened at Seattle, Washington, on March 26, 1981. William A. Harrison, Administrative Law Judge, presided.

1 Appellant was represented by its attorney, Robert R. Davis, Jr.
2 Respondent King County was represented by Susan R. Agid, Deputy
3 Prosecuting Attorney. Respondents H. M. Johnson and Terminal 128
4 Corporation were represented by their attorney, William D. Rieves.

5 Reporter Dorothy Nevin recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined. From
7 testimony heard and exhibits examined, the Shorelines Hearings Board
8 makes these

9 FINDINGS OF FACT

10 I

11 This case arises in a highly industrialized district alongside the
12 Duwamish Waterway near the King County Airport and just south of the
13 city limits of Seattle. The shoreline of the area is an artificial
14 one created by dredging and filling calculated to accommodate the
15 industrial uses located there.

16 On one such filled site along the Duwamish, appellant Monsanto
17 operates a facility which converts the sulfite waste liquor of pulp
18 mills into a valuable product known as vanillin. Vanillin is used in
19 lieu of natural vanilla as flavoring, and is also used
20 pharmaceutically in the treatment of certain diseases. The Monsanto
21 facility is bounded on the north by the expansive Kenworth Truck
22 assembly plant, on the west by the Duwamish, and on the south by the
23 site in question: an unfilled, open inlet of water known as "slip 6."

24 Prior to 1973, Monsanto owned the adjacent bed beneath the waters
25 of slip 6. In that year Monsanto sold the bed to the Port of
26 Seattle. During construction of the Alaska Pipeline, slip 6 was used

1 as a staging area for shipments north. Today slip 6 is bordered at
2 its rear (east side) and south side by expansive paved areas. On its
3 north side, common with Monsanto, there is the sloped bank of
4 Monsanto's fill which is covered with rock rip-rap. The 1973
5 conveyance placed the boundary line generally along the top of that
6 slope so that the slope itself is now part of the site in question
7 belonging to the Port of Seattle. There is a chainlink fence
8 constructed by Monsanto along the boundary.

9 II

10 The Port of Seattle awarded a long-term lease to respondent
11 Terminal 128 Corporation which later applied to respondent King County
12 for a Shoreline Substantial Development Permit on June 30, 1980. The
13 proposed development consists of a 40-slip marina for commercial
14 fishing vessels, together with upland warehousing, cold-storage,
15 office, and parking facilities. Monsanto's concern in this matter is
16 directed toward the 40-slip pier itself which is proposed for
17 construction parallel to the slope which borders the Monsanto
18 facility. Specifically, the pier would be at least 6 feet waterward
19 of the toe of the slope at mean low, low water.

20 After consideration of the environmental checklist (see WAC
21 197-10-365) submitted by Terminal 128, King County issued a
22 declaration of non-significance under the State Environmental Policy
23 Act, chapter 43.21C RCW, on September 17, 1980. Thereafter, on
24 November 4, 1980, King County issued the subject Substantial
25 Development Permit to Terminal 128. Monsanto requests review of that
26 permit.

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III

Monsanto's concern is focused upon the fire danger which it foresees as inherent in the proposed marina. Monsanto has a series of large storage tanks located on a diked concrete pad just across two railroad spurs from the boundary chainlink fence. Of these, those nearest the boundary contain non-flammable caustic or by-product liquids. The flammable solvent toluene is stored in tanks farthest from the boundary so that a fire occurring at the proposed marina would pose little or no threat of igniting that toluene. Storm runoff from the tanks' concrete pad contains some spilled oil and toluene. These pollutants are removed before runoff is discharged into the Metro sewer system. The oil and toluene thus removed are stored in a large, uncovered retention pond located next to the south boundary chainlink fence. Toluene is also delivered in railroad cars which are stored on the spurs next to the fence. Such storage of toluene rail cars has occurred "once or twice" in the last two years. There are weeds growing amongst the rock rip-rap of the slope leading down to the location of the proposed marina pier. Monsanto points to the possibility that an accidental fire aboard one of the fishing boats at the proposed marina could leap onto the slope, there ignite the dry weeds, and burn up the slope and then to the flammable liquids in either the retention pond or the railroad cars (assuming they are present) causing a greatly increased fire or explosion.

While this scenario is conceivable, it is improbable for two reasons. First, the proposed marina pier is planned for ordinary moorage. The practices of "living aboard" or in-water boat repair with

1 their attendant greater risk of fire were not proposed (and even so
2 are prohibited by express conditions in the substantial development
3 permit). Also, the proposed marina pier will consist of concrete
4 floats with only the piling of wood. Second, there are established,
5 well organized, and trained firefighting services available to the
6 proposed marina and to Monsanto. These include the regular fire
7 district whose personnel are trained in the specialty of industrial
8 firefighting, the firefighting resources of The Boeing Company at King
9 County Airport (which are available to the fire district by joint
10 operating agreement), and a five-person firefighting team employed by
11 Monsanto.

12 The proposed marina has not been shown to pose an abnormal risk of
13 fire under the facts of this case to either itself, Monsanto, or the
14 public at large.

15 IV

16 The application for the subject substantial development permit
17 does not contain any reference to site specific improvements which may
18 be required by the King County fire code. This is so because King
19 County followed its ordinary procedure of acting on the substantial
20 development permit prior to acting on the building permit, and
21 postponing fire code review to the building permit stage. The
22 substantial development permit has a condition requiring compliance
23 with the fire code. Construction of the proposed development cannot
24 begin until the building permit is issued, and the building permit is
25 the occasion when fire code requirements specific to the site will be
26 imposed.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant first contends that King County's declaration of non-significance under the State Environmental Policy Act, chapter 43.21C RCW (SEPA) was invalid and, thus, its issuance of the substantial development permit was invalid also. King County, as the governmental body subject to SEPA, demonstrated in this case "that environmental factors were considered in a manner sufficient to be prima facie compliance with the procedural dictates of SEPA," thus meeting the duty imposed by Lassila v. Wenatchee, 89 Wash. 2d 804, 814, 576 P. 2d 54, 57 (1978) and Bellevue v. King County Boundary, 90 Wash. 2d 856, 586 P.2d 470 (1978). This it did by showing careful consideration of the completed checklist prescribed by WAC 197-10-365 of the SEPA guidelines which was submitted by Terminal 128. Appellant takes issue with only those aspects of the SEPA checklist which relate, directly or indirectly, to fire hazard.

Our standard for review of a negative threshold determination is whether the county's decision is "clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order" (SEPA). RCW 43.21C.090 and Norway Hill v. King County Council, 87 Wash. 2d 267, 552 P. 2d 674 (1976). On the entire record as submitted, which

1 includes both the SEPA checklist and evidence relating to the scope of
2 any fire hazard posed by the marina or its location, we conclude that
3 King County's declaration of non-significance was not clearly
4 erroneous, and that the substantial development permit is not invalid
5 on that basis.¹

6 II

7 Appellant next contends that the proposed marina is inconsistent
8 with the policy of the Shoreline Management Act, RCW 90.58.020,
9 specifically, that the existence of the perceived fire danger does not
10 uphold the policy to:

11 minimize, insofar as practical, any resultant damage
12 to the ecology and environment of the shoreline area.
13 (emphasis added.)

14 We disagree. Appellant has the burden of proving any inconsistency
15 with the policy of the Shoreline Management Act. RCW 90.58.140(7).
16 In this case, appellant has not proven a fire hazard significant
17 enough to violate this policy. The proposed marina is consistent with
18 the policy for minimizing damage to the ecology, cited above, on the
19 evidence presented in this case.

21 1. Our determination in this case that King County's declaration of
22 non-significance was not clearly erroneous is based upon the
23 proposed development without any site specific improvements that
24 may be imposed later by the building permit. However, the
evidence in this case suggests that the fire code may require
removal of the weeds on the rip-rap slope and either hydrants at
intervals along the pier or an access road for fire trucks.

1 III

2 We have reviewed appellant's other contentions that the proposed
3 marina is inconsistent with either the Shoreline Management Act or the
4 King County Shoreline Master Program and conclude that these
5 contentions are without merit.

6 Appellant has not shown that the proposed marina requires either a
7 conditional use or variance permit.

8 IV

9 The substantial development permit requires conformity with the
10 fire code. The evidence indicates that the fire code may require
11 improvements on the site. These may, in themselves, constitute
12 substantial developments. Two things follow from this: 1) the fact
13 that the substantial development permit now before us does not include
14 such additional substantial development as the fire code may require
15 is no defense to such fire code requirements and, therefore, 2) King
16 County should consider causing an appropriate fire code review of a
17 proposed shoreline development before acting on the substantial
18 development permit. This would condense all shoreline substantial
19 development review into a single proceeding. It may also avoid the
20 possibility that a new or revised substantial development permit would
21 be required.²

22
23 2. King County's practice of issuing a negative threshold
24 determination under SEPA and a substantial development permit
25 before revealing fire code requirements may, in another case,
26 increase the likelihood that an EIS would be required because of
27 fire danger. Were the applicant informed of fire code
requirements in advance, the proposal could be modified to include
these (see WAC 197-10-370 of SEPA guidelines) thus reducing the
fire danger and correspondingly reducing the likelihood that an
EIS will be required.

Appellant failed to prove that the substantial development permit in question was issued contrary to either SEPA or the Shoreline Management Act, and the permit should be affirmed.

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Substantial Development Permit issued by King County to Terminal 128 Corporation is hereby affirmed.

DONE at Lacey, Washington, this 29th day of April, 1981.

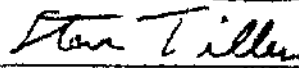
SHORELINES HEARINGS BOARD



DAVID AKANA, Member



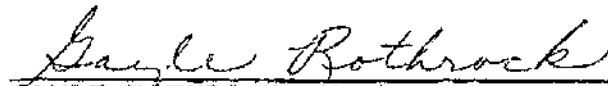
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